

WESTEC CABLEVISION

The REAL Cable Company
Serving Shawnee & Lake Quivira

DOCKET FILE COPY ORIGINAL

JAN 23 1993

PCD - TANK ALLEN

January 21, 1993

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Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

JAN 26 1993

RE: MM Docket 92-266

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Sirs:

I am enclosing for your information, in response to your recent Notice of Proposed Rulemaking on various aspects of the 1992 Cable Act (Public Law No. 102-385), a copy of a Channel Lease Agreement executed between a local CATV operator (represented by myself) and a local programming supplier.

My reason for sending this to you is that it is the only Channel Lease Agreement that I have ever heard of, and I think the Video Programming marketplace reflects the fact that few, if any Leases have ever been accomplished. I drew this document up with the goal of encouraging independent video programming diversity while still retaining the operator's necessary control over the system.

The key to this lies in getting the operator to recognize that reimbursement (for the leased channel) can be had in ways other than direct, upfront cash payments. This, of course, can only be accomplished if the proposed programming source can supply (at no cost to the operator) programming that increases the public's perceived value of the "Basic Cable" offering, thus enticing a greater percentage of "homes passed" to subscribe to "Basic Cable."

Obviously, programming like EWTN (see contract) should be more valuable, in an average community, than "The Furniture Channel." And depending upon the number of unused, warehoused channels an operator has available, both or neither may make sense. But I believe this approach is a step in the right direction if one is truly interested in fostering alternative program sources. I believe this is more viable than waiting for "nonprofit" programmers who spend \$15 million per year to somehow materialize overnight in the thousands of smaller cities across the land. Most local groups can raise the money needed to acquire or produce the programming in question, if only they weren't saddled with high, upfront cash demands for channels (that are currently unproductive).

No. of Copies rec'd _____
List A B C D E

Shawnee & Lake Quivira
913-362-8903

211 East 8th, Suite C
P.O. Box 1693, Lawrence, Kansas 66044

Lawrence
913-843-8153

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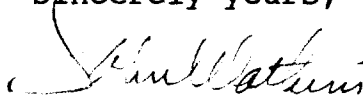
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JAN 26 1993

In a similar vein, restrictive regulations that narrow the definition of who can qualify as a "not-for-profit" or "minority" programmer will serve only to further entrench the existing panopoly of national programmers at the expense of true local expression and involvement.

Please consider these items in your deliberations about the Proposed Rulemakings, and please let me know if there is anything else I can provide you in this regard.

Sincerely yours,



John V. Watkins

JVW:sjr

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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JAN 25 1993

FCC - MAIL ROOM

"BASIC CABLE" CHANNEL LEASE AGREEMENT

This Agreement, dated on this 16TH day of July, 1991, is by and between WESTERN TECH, INC., d/b/a WTI (hereafter "Lessor"), a for-profit corporation organized under the laws of the State of Kansas, and CATHOLIC FAMILIES, INC. d/b/a CFI (hereafter "Lessee"), a for-profit corporation organized under the laws of the State of Kansas.

In consideration of the mutual covenants hereinafter set forth, Lessor and Lessee agree as follows:

1. Grant of Rights:

Lessor hereby leases to Lessee a single NTSC Video channel (bandwidth of 6 Mhz) on Lessor's CATV system(s) listed in Exhibit C, for the sole purpose of adding Lessee's audio/video program(s) to the "Basic Cable" channel package offered to the "Basic Cable" subscribers of Lessor. Substantially increasing the public's perceived value of Lessor's "Basic Cable" offering, (as determined solely by Lessor) is a primary consideration in Lessor's agreement or refusal to lease bandwidth to any applicant. Lessee's specific intent is to: exhibit and distribute programming services known as Catholic Families and Eternal Word Television Network (EWTN), generally consisting of programs related to public affairs, including (but not necessarily limited to) the carriage of programs related to or favorable towards the Roman Catholic Faith and/or practice.

Lessor and Lessee agree that nothing herein shall prohibit Lessor from offering other programming of a similar or like nature in either it's "Basic Cable" channel selection (see Exhibit A), or elsewhere in its other signal or service offerings.

Lessee specifically agrees that under no circumstances shall Lessee show or cause to be shown any program or materials that are considered lewd, lascivious, obscene, prurient, racially hateful or sexually offensive to the community, as determined in the sole discretion of the Lessor, who shall have the right to unilaterally cancel this contract and to cease carriage of Lessee's signal in the event of such offense.

Lessee also agrees that the cost and maintenance of all equipment needed to provide, produce, procure and deliver its audio/video signal(s) to Lessor shall be the sole responsibility of the Lessee. Lessor shall have the right to specify the type and make of any equipment to be housed in and/or interconnected with Lessor's equipment. However, Lessor agrees to cooperate with Lessee in the placement of Lessee's equipment on Lessor's premises, and further, to cooperate in the interconnection of Lessee's equipment with Lessor's equipment, including Lessee's free use of any unused portion of Lessor's equipment designed to receive satellite-distributed programming integral to Lessee's

video programming (specifically, any unused ports of Lessor's TVRO power dividers that receive signal(s) from Lessor's LNA/LNB's). Nothing herein shall be taken to construe any other right by Lessee to equipment or facilities of Lessor, and Lessee specifically agrees that it is solely responsible for preventing any interference (mechanical, electromagnetic or otherwise) to Lessor's facilities, equipment, signals, processors or other property of Lessor.

Lessee and Lessor agree that unless otherwise agreed to, access to Lessor's equipment and premises shall be restricted to regular business hours as determined by Lessor.

Lessor also hereby prohibits the airing of any fund-raising appeals for Lessee's direct benefit without the specific prior written consent of Lessor.

Lessee agrees that the specific designation of the video channel number of the 6 Mhz of transmission bandwidth granted Lessee by this contract shall be determined solely by Lessor, who shall endeavor to place it in favorable proximity to the other video channel offerings comprising the "Basic Cable" lineup. However, Lessor agrees that if, for any reason it changes the bandwidth allocated to Lessee after Lessee has begun the delivery of signal contemplated by this contract, that Lessor will hold Lessee harmless for any monetary cost of changing the transmitted frequency. Lessor and Lessee specifically agree that Lessor is not responsible for any claims relating to marketing and advertising costs, and the like.

Lessor and Lessee agree that the definition of "Basic Cable" is that definition advanced (and as modified from time to time) by the Federal Communication Commission (FCC), and that at the time of the execution of this contract, such "Basic Cable" consists of those signals listed in "Exhibit A" attached. Lessor and Lessee hereby agree that nothing contained herein this contract shall regulate or prohibit Lessor from altering, deleting, changing the makeup or content of this "Basic Cable" offering or the rates it charges subscribers for the receipt thereof. Nor does this contract in any way prohibit Lessor from changing, altering or deleting the makeup of its "Basic Cable" offering in respect to the equipment needed by the subscribers to receive any or all such signals as are included in the "Basic Cable" offering. However, Lessor agrees that no action taken by it will serve to discriminate solely against Lessee's video signal either with respect to the equipment necessary to either transmit or receive Lessee's signal, or with respect to the frequency allocation made for the purpose of accommodating Lessee's signal(s).

2. Effective Date.

This Agreement shall become effective within thirty (30) days of its execution, or upon the actual delivery of the equipment and signal necessary to the carriage of Lessee's signal ("Launch Date") by Lessee to Lessor's premises (hereby stated to be housed at 5239 Woodland, Shawnee, Kansas), whichever comes first.

3. Term.

The term of this agreement is two (2) years, and this agreement shall be automatically renewed for a like term unless either party notifies the other by certified or registered of its intention to terminate ninety (90) days prior to the expiration of the term then current.

4. Leasing Fees.

In addition to Lessor's initial and sole determination that Lessee's video signal offering will substantially increase the viewing publics' favorable perception of Lessor's "Basic Cable" service value; and that Lessee is financially able to procure all equipment necessary to provide, produce, procure, deliver and display Lessee's signal(s) (including cameras, satellite receivers, videotape recorders/players, modulators, etc.); Lessor also demands (and Lessee agrees to pay and/or deliver) the following in return for the leasing of Lessor's channel space to Lessee:

- a) Lessee agrees to deliver to Lessor's premises, at no cost to Lessor, quality video/audio signal(s), in a VSB-AM modulated format, free of interference, containing actual program content (and not simply a color-bar, test-pattern or blank-modulated screen) for a period of not less than eighteen (18) hrs. per day (as measured in any continuous 24 hour period). Further, in such time periods allowed (~~six (6)~~ hours/day) when actual program content is absent from Lessee's video/audio signal(s), Lessee must provide a suitable (as determined solely by the Lessor) substitute (including, but not limited to, standard CATV industry color-bar or test-patterns).
- b) Lessee agrees to pay an amount equal to twenty five percent (25%) of Lessee's total gross revenues received from the activities related to the airing of it's signal(s) on Lessor's "Basic Cable" channel, including (but not limited to) the following:

- i. **Advertising revenues to Lessee:** (either national, regional, local or otherwise including barter-syndication agreements);
 - ii. **Merchandising Revenues to Lessee:** (including the sale of any items offered by Lessee);
 - iii. **Donation Revenues to Lessee:** (whether solicited, voluntary or otherwise);
 - iv. **Subscription Revenues to Lessee:** (of any type, for any activity or product shown or featured in Lessee's program content). Nothing taken herein however, shall be construed to give Lessee any right to scramble its video or audio signal for the purpose of denying access to any of Lessor's "Basic Cable" subscribers. Under no circumstances is this lease to be construed as giving Lessee any right to operate a "Pay TV" or "Pay-Per-View" channel on Lessor's system.
- c) Lessee, during times of local programming, agrees to make available to Lessor, at no cost to Lessor, one (1) minute(s) per hour (at :59 of each hour of local programming) of local advertising insertion availability on Lessee's "Basic Cable" channel.

Lessor agrees to provide all equipment and advertising content necessary to effect such insertion, as well as the production and placement costs of such advertising.

Lessor further agrees to restrict such advertising content to products and services that would not be objectionable to Lessee or its affiliates, and agrees to remove any such advertisements upon receipt of written objection (delivered by certified or registered mail) by Lessee.

5. Payment.

- a) The Service Fee shall be payable quarterly, to Lessor by Lessee at the address specified in Exhibit "B". The first payment shall be due within fifteen (15) calendar days of the Launch Date, or within sixty (60) days of the execution of this Agreement, whichever occurs first, and shall be pro rated through the calendar quarter during which service has commenced or is scheduled to commence. Subsequent payments shall be made on or before January 15, April 15, July 15 and October 15 of each calendar year, unless otherwise agreed to in writing.
- b) Failure of Lessee to pay within thirty (30) days of due dates as herein described constitutes default. Upon such default, Lessor may at its sole option, (i) impose

a late payment charge of one and a half percent (1.5%) of the amount due per month, or (ii) notify by registered or certified mail that Lessee's rights under this contract are terminated for non-performance, and that Lessor has or will remove Lessee's signal(s) from its "Basic Cable" channel lineup.

- c) Lessor shall have the right to inspect and audit the books and records of Lessee during normal business hours upon reasonable notice. If any such audit reveals a deficiency, Lessee agrees to pay Lessors audit-related expenses, in addition to the amounts determined to be deficient, plus interest on the principal amount due of 18% per year.

6. Representations and Indemnification.

- a) Lessor and Lessee each represent and warrant to the other that they have the power and authority to enter into this Agreement and to fully perform their respective obligations hereunder.
- b) Lessor and Lessee shall each indemnify and forever hold harmless the other, the other's affiliated companies and their respective officers, directors, employees and agents from all liabilities, claims, costs, damages and expenses (including, without limitation, reasonable counsel fees of counsel of the other party's choice) arising out of any breach or claimed breach of any representation or any of its obligations pursuant to this Agreement.
- c) Lessee will indemnify Lessor from and against any and all claims, liabilities, costs and expenses arising out of the extent that such claims, damages, liabilities, costs and expenses are: (i) based upon alleged libel, slander, defamation, invasion of the right of privacy, or or violation or infringement of copyright (other than music performance rights) or literary or dramatic rights arising out of the content of the Lessee's Service; (ii) based upon the distribution of programs as furnished by Lessee without any deletions by Lessor except as required by Lessee; and (iii) not based upon any material added by Lessor to such programs (as to which deletions and added material Lessor shall, to the like extent, indemnify Lessee, all network advertisers, if any, on such program, and the advertising agencies of such advertisers).
- d) Each party shall so indemnify the other only if such other party gives the indemnifying party prompt notice of any claim or litigation to which its indemnity applies; it being agreed that the indemnifying party

shall have the right to assume the defense of any or all claims or litigation to which its indemnity applies and that the indemnified party will cooperate fully with the indemnifying party in such defense and in the settlement of such claim or litigation.

- e) Except as herein provided to the contrary, neither Lessor nor Lessee shall have any rights against the other party hereto for claims by third persons or for the nonoperation of facilities or the nonfurnishing of the Lessee's Service if such nonoperation or nonfurnishing is due to failure of equipment, action or claims by any third person, labor dispute or any cause beyond such party's reasonable control.

7. General Provisions.

- a) **Entire Agreement:** This Agreement contains the entire understanding of the parties relating to the subject matter hereof and may be amended or modified only by a writing signed by both parties. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall remain in full force and effect.
- b) **Applicable Law:** The obligations of the parties under this Agreement are subject to all applicable federal, state and local laws, rules and regulations, and this Agreement shall be governed by the laws of the State of Kansas.
- c) **No Assignment:** This Agreement shall pass to and be binding on the respective assigns, transferees and successors of the parties; provided, however, that this Agreement shall not be assigned by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld.
- d) **Notices:** All notices and payments required to be given hereunder shall be in writing to the appropriate party and its address set forth in Exhibit "B" or by delivering it to an officer of such party in person at such address. Where notice is sent by certified or registered mail, it shall be deemed given on the third day following the date of the mailing, and if delivered in person, such notice shall be effective when so delivered.
- e) **Nature of Relationship:** Nothing contained herein shall be deemed to create, and the parties do not intend to create, any relationship of partners or joint venturers as between Lessor and Lessee and neither party is authorized to or shall act toward third parties or the public in a manner which would indicate any such

relationship with the other. Neither Lessee nor Lessor shall be or hold itself out as the agent of the other under this Agreement.

- f) Force Majeure: Lessor shall not be liable to Lessee for any loss or damage resulting from the interruption of service due to failure of facilities, labor disputes, preemptions, governmental action, or causes beyond its control, or for any loss or damage or any claims made by or against Lessee arising or resulting from services furnished hereunder.
- g) Lessee Contact: Lessee agrees to furnish Lessor with the name, address and telephone number on Exhibit B of the appropriate person to be contacted regarding matters other than payment.
- h) Trade Names: Lessor acknowledges Lessee's exclusive right, title and interest in and to the trade name "Catholic Families, Inc.". Lessor agrees that all uses of the marks now and hereafter developed or used by Lessee shall be owned and shall inure to the benefit of Lessee.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above mentioned.

LESSEE

LESSOR

CATHOLIC FAMILIES, INC.

WESTERN TECH, INC.

By: 

By: 

Scott Bloch
Print Name

JOHN WATKINS
Print Name

Pres - Sec/Treas
Title

Pres
Title



-seal-

-seal-

EXHIBIT A

"Basic Cable" Channels

Ch.2	Channel Notes	Ch.24	Headline News
Ch.3	FOX ch.41 KC	Ch.25	C-SPAN (Congress)
Ch.4	NBC ch.4 KC	Ch.26	The Discovery Channel
Ch.5	CBS ch.5 KC	Ch.27	Nickelodeon
Ch.6	KZKC c.62 KC	Ch.28	The Family Channel
Ch.7	KYFC ch.50 KC	Ch.29	ESPN Sports
Ch.8	PBS ch.19 KC	Ch.30	USA Network
Ch.9	ABC ch.9 KC	Ch.31	TBS Atlanta
Ch.10	JCP Shopping	Ch.32	WGN Chicago
Ch.11	QVC Shopping	Ch.33	Lifetime Network
Ch.12	NBC ch.27 Topeka	Ch.34	The Travel Channel
Ch.13	CBS ch.13 Topeka	Ch.35	The Nashville Network
Ch.19	American Movie Classics	Ch.37	Financial News Network
Ch.20	The Learning Channel	Ch.38	TNT
Ch.23	Cable News Network	Ch.50	Arts & Entertainment

EXHIBIT B

"Notice to Parties"

Lessor: Western Tech, Inc.
211 E. 8th Street Suite "C"
Lawrence, Kansas 66044

Contact: John V. Watkins, President
Phone: 913-843-8153

Lessee: Catholic Families, Inc.
316 Settlers Court
Lawrence, Kansas 66044

Contact: Scott Bloch, Incorporator
Phone: 913-843-1067

EXHIBIT C

"System Locations"

System Location(s): Shawnee, KS
Lake Quivira, KS
Kansas City, KS

Names: Western Tech, Inc./
Westec LTD, L.P.